

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*  
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-MV-LFG

RIO CHAMA STREAM SYSTEM

Section 1, Chama Mainstream

Acequia de Chamita  
Acequia de Hernandez  
Acequia de los Salazares

**RENEWED MOTION BY THE STATE OF NEW MEXICO  
TO ADOPT, *IN PART*, TO MODIFY AND OBJECTIONS TO  
SPECIAL MASTER'S REPORT ON PRIORITIES FOR THREE ACEQUIAS**

The Plaintiff State of New Mexico on the relation of the State Engineer ("State") hereby renews the February 20, 2010 *State of New Mexico's Motion to Adopt, In Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. 9597), and in support states the following:

1. Special Master L. Vickie Gabin filed her *Special Master's Report on Priorities for Three Acequias* ("Report") on December 16, 2009 (Doc. 9546) and recommended that the Court find that the first use of water under the Acequia de Chamita, Acequia de Hernandez and Acequia de los Salazares was 1600. On February 20, 2010, the State filed its motion to adopt the recommendation of the priority date of 1600 for water rights under the three acequias, but also objected to portions of the *Report* and requested that the *Report* be modified in certain respects. *State of New Mexico's Motion to Adopt, In Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. 9597, filed February 20, 2010). Through counsel, the three acequias also

requested that the Court adopt the *Report* and the recommended priority date of 1600. *Motion to Adopt Special Master's Report and Recommendations on Priority Date for three Acequias* (Doc. 9556, filed January 7, 2010). Numerous *pro se* parties filed objections to the *Report* requesting a hearing to prove an earlier claimed priority date of August 11, 1598 for their water rights under the Acequia de Chamita. *See Memorandum Opinion and Order* (Doc. 9720, filed May 21, 2010).

2. On April 28, 2010, the Court granted a motion by the State of New Mexico and ruled that it would limit objections to the *Report* to those persons that timely objected to the Court's original Notices and Orders to Show Cause, or their successors-in-interest. *Memorandum Opinion and Order* (Doc. 9700, filed April 28, 2010). In granting a separate motion by the State, the Court also ruled that it would limit its review of objections to the *Report* to the evidence and testimony presented to the Special Master at the hearings on the disputed priorities in August 1996. *Memorandum Opinion and Order* (Doc. 9910, filed June 25, 2010).

3. *Pro se* defendant David Ortiz subsequently filed a *Motion to Reconsider and Review Evidence Submitted by Objectors and Joint Objectors of the Recommended 1600 Priority Date for the Acequia de Chamita and Assign the August 11, 1598 Establishment Date* (Doc. 9949, filed September 2, 2010), and a *Motion to Reconsider; Receive the Evidence, to Modify in Part and the Opportunity to be Heard* (Doc. 9951, filed September 8, 2010). Among other things, Ortiz requested that the Court consider a 260 page compilation of documents and argument that he had filed with the Court on March 31, 2010 (Doc. 9657) as evidence for the claimed priority of August 11, 1598. *Motion* (Doc. 9949) at 1.

4. On September 9, 2010, the Court *sua sponte* denied without prejudice the motions by the State of New Mexico (Doc. 9597) and Acequias de Chamita, Hernandez and Los Salazares (Doc.

9556) to adopt the *Report*, and stated that the State and the three acequias could renew their motions after the Court ruled on David Ortiz' motion to reconsider. *Order* (Doc. 9952, filed September 9, 2010).

5. By *Order* dated November 16, 2010 (Doc. 9979), the Court remanded the matter to the Special Master and instructed the Special Master to file a notice directing the State to show cause why the owners of certain subfiles, persons who had not previously been served, should not now be served with orders to show cause regarding the priority date for their water rights.

6. On January 31, 2011, the Court denied the State's *Motion to Exclude Additional Evidence in Memorandum by pro se Party David Ortiz* (Doc. 9935), David Ortiz' *Motion to Reconsider and Review Evidence Submitted by Objectors and Joint Objectors* (Doc. 9949), and David Ortiz' *Motion to Reconsider; Receive the Evidence, to Modify in Part and the Opportunity to be Heard* (Doc. 9951) as premature. *Memorandum Opinion and Order* (Doc. 9996, filed January 31, 2011).

7. On February 2, 2011, the State responded to the *Notice and Order* by Special Master Gabin (Doc. 9983, filed November 29, 2010) and agreed that the water rights owners associated with the 5 subfiles in question (including David Ortiz) had not been served with orders to show cause previously, and agreed that they should be allowed to offer relevant evidence in support of their claims should they contest the priority offered by the State after service of that offer. *State of New Mexico's Response to Notice and Order to Show Cause Dated November 29, 2010* (Doc. 9997, filed February 2, 2011); *see also Amended Special Master's Report Recommending Future Proceedings* (Doc. 10152, filed June 6, 2011); *Order* (Doc. 10537, filed August 25, 2011) (granting the State's *Motion to Adopt Special Master's Report Recommending Future Proceedings* (Doc. 10157)).

8. The State served the various owners of the 5 subfiles in question including David Ortiz with Notices and Orders to Show Cause that proposed a priority date of 1600 for their water rights. *See Certificate of Service* (December 19, 2011, Doc. 10671). Only the owners of Map/Tract 22.17 in subfile 267 (David Ortiz and Cecilia Ortiz) filed an objection to the proposed priority date. *Objection and Response to NOSC* (Doc. 10680, filed January 11, 2012).

9. Pursuant to the Court's August 25, 2011 *Order* (Doc. 10537), the State and David Ortiz and Cecilia Ortiz filed a case management order with the Court (Doc. 10687), and the parties are scheduled to attend a final pre-trial conference with Magistrate Judge Lorenzo F. Garcia on October 25, 2012 prior to a hearing on the merits. *See Order Setting Pretrial Conference* (Doc. 10864, filed October 2, 2012).

10. David Ortiz and Cecilia Ortiz will have the opportunity to offer relevant evidence in support of their claims in an evidentiary hearing before Magistrate Judge Lorenzo F. Garcia. Thus, Mr. Ortiz has obtained the relief that he sought in his earlier motions for reconsideration (Docs. 9949 & 9951) and those motions are moot. The Court has also denied those motions by *Order* dated January 31, 2011 (Doc. 9996), and the State may now renew its original motion to adopt the Special Master's 2009 Report.

11. The State of New Mexico hereby renews its February 20, 2010 *Motion to Adopt, In Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. 9597), with one qualification. The State's request applies to only to water rights appurtenant to tracts of land under the Acequias de Chamita, Hernandez and Salazares other than the lands owned by David Ortiz and Cecilia Ortiz under the Acequia de Chamita (Map/Tract 22.17). Pursuant to the Court's August 25, 2011 *Order* (Doc. 10537), proceedings to resolve the priority date claims for the Ortiz

lands will be conducted separately from the Court's review of the 2009 Special Master's Report. *Id.* at 2.

12. The State incorporates herein the contents of the February 20, 2010 *State of New Mexico's Motion to Adopt, In Part, to Modify and Objections to Special Master's Report on Priorities for Three Acequias* (Doc. 9597).

Respectfully submitted,

/s/ Ed Newville

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of October 2012, I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM-ECF participants in the manner indicated.

Via first class mail, postage prepaid addressed as follows:

David Ortiz  
Cecilia Ortiz  
P.O. Box 1082  
San Juan Pueblo, NM 87566

/s/ Ed Newville

EDWARD G. NEWVILLE